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MEMORANDUM

TO: David Silverstein and Andrew Graham

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: January 23, 2018

SUBJECT: Proposed initiative measure 2017-2018 #120, concerning Transparency in Prescription Drug Prices

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

An earlier version of this proposed initiative, proposed initiative 2017-2018 #85, was the subject of a memorandum dated December 19, 2017. Proposed initiative 2017-2018 #85 was discussed at a public hearing on December 21, 2017. The substantive and technical comments and questions raised in this memorandum do not include comments and questions on initiative 2017-2018 #85 not addressed in this revised proposal. To the extent applicable, those comments and questions are hereby incorporated.

This initiative is one of a series identified as initiatives 2017-2018 #118 to #122. The comments and questions raised in this memorandum do not include comments and questions addressed in the memoranda for proposed initiatives 2017-2018 #118, #119, #121, and #122, except as necessary to fully understand the issues raised by the revised proposed initiative.

Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To require every pharmacy to publish, in a form and manner determined by the state board of pharmacy, promptly update as specified by the pharmacy board, and maintain records of changes to, as specified by the pharmacy board, its retail drug prices, which is a list of the prices the pharmacy charges to an insured or uninsured person for prescription drugs it administers or dispenses, before any rebates, discounts, or other price adjustment mechanisms are applied;
2. To require the pharmacy board, on or before April 30, 2019, to adopt rules necessary to implement, administer, and enforce the requirements imposed on pharmacies and to thereafter revise the rules as necessary;
3. To define terms used in the measure; and
4. To specify that the measure takes effect on April 30, 2019.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. The declaration of legislative purposes in section 1 of the initiative proposal is identical to the purposes stated in initiatives 2017-2018 #118, #119, #121 and #122. However, the substantive provisions of this initiative are more narrowly focused on pharmacy prescription drug pricing. Would you consider narrowing section 1 of the proposal to reflect only purposes related to pharmacy price information?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. The amending clause for a new part, as in sections 1 and 2 of the proposed initiative, should read "...**add** part 3 to article 20..." instead of "...**add** part 3 of article 20..."
2. Both section 1 and section 2 of the proposed initiative add a new part 3 to article 20 to title 6 of the Colorado Revised Statutes. These amending clauses should be combined into a single amending clause, followed by the heading for the new part 3. The purpose section should be renumbered as "6-20-302" and moved to follow section 6-20-301. The following sections, 6-20-302 and 6-20-303, should be renumbered as 6-20-303 and 6-20-304, respectively.
3. The term "healthcare" is used throughout the purpose section of the proposed initiative. However, throughout the Colorado Revised Statutes, the term is spelled "health care." Consider changing all instances of "healthcare" to "health care."
4. Statutory text should immediately follow each headnote. For example, the text in subsection (1) of section 6-20-303 should be moved to follow "**rules.**" instead of appearing on the next line.